(32654)

IN THE

Supreme Court of the United States

October Term, 1927, No. 231

TEXAS AND NEW ORLEANS RAILROAD COMPANY, Petitioner,

vs.

NORTHSIDE BELT RAILWAY COMPANY, Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

Reply Brief For TEXAS AND NEW ORLEANS RAILROAD COMPANY

H. M. GARWOOD,
J. H. TALLICHET,
Solicitors for Petitioner.

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Respondent, Northside Belt Railway Company, appears to base its entire case on the proposition that an incorporated railway company, a common carrier, exercising the power of eminent domain, having constructed its railroad, may operate it or not at its pleasure; and may, at its pleasure, transport only intra-state commerce.

In reply, petitioner, Texas and New Orleans Railroad

Company submits four statutes of the State of Texas, two of the provisions of the Interstate Commerce Act, as amended, and brief quotations from a decision of this Court:

I.

Revised Statutes of Texas, 1925:

> Article 6418: If any railroad corporation organized under this title shall not within two years after its articles of association shall be filed and recorded as provided in this title, begin the construction of its road, and construct, equip and put in good running order at least ten miles of its proposed road, and, if any such railroad corporation, after the first two years, shall fail to construct, equip and put into good running order at least twenty additional miles of its road each and every succeeding year until the entire completion of its line, such corporation shall, in either of such cases, forfeit its corporate existence, and its powers shall cease as far as relates to that portion of said road then unfinished, and shall be incapable of resumption by any subsequent act of incorporation. *The provisions of this article shall not apply to or in any manner affect railway companies incorporated for the construction and operation of urban, suburban and belt railroads for a distance of less than ten miles, as provided in Chapter 1 of this title; provided, that all such companies shall, within twelve months from the date of their charter, complete a portion of their road and commence and continue the running of the cars thereon.* This article shall apply as well to branch lines as to main lines of railroads.

(Note: We have *italicized* the provisions of the above law which are applicable to Respondent.)

Article 6357: Every such corporation shall start and run their cars for the transportation of passengers and property at regular times to be fixed by public notice, and shall furnish sufficient accommodation for the transportation of all such passengers and property as shall, within a reasonable time previous thereto, offer or be offered for transportation at the place of starting and at junctions of other roads and at sidings and stopping places established for or receiving and discharging way passengers and freight and shall take, transport and discharge such passengers and property at, from and to such places, on the due payment of the tolls, freight or fare legally authorized therefor. Failure on the part of railroad companies to comply with the requirements of this article shall be deemed an abuse of their rights and privileges and such abuse shall at once be corrected and regulated by the Railroad Commission. No railroad corporation nor any manager or receiver of any railroad shall ever abandon operation of its trains over said railroad or any part thereof, and if any railroad corporation, manager or receiver has or may hereafter abandon operation of its trains over its said railroad, or part thereof, the Railroad Commission of Texas shall at once issue its order directing said railroad corporation, manager or receiver to at once resume operation of its trains over said road or part thereof, in accordance with the orders, rules and regulations of the said Commission.

Article 6360: In case of the refusal by such corporation or their agents so to take and transport any passengers or property, or to deliver the same, or either of them, at the regularly appointed time, such corporation shall pay to the party aggrieved

all damages which shall be sustained thereby, with costs of suit; and in case of the transportation of property shall in addition pay to such party special damages at the rate of five per cent per month upon the value of the same at the time of shipment, for the negligent detention thereof beyond the time reasonably necessary for its transportation. In suits against such corporation under this law, the burden of proof shall be on such corporation to show that the delay was not negligent.

Article 6410: Each railway company doing business in this state shall be required to receive from all steamships, steamboats and other water craft and vessels, at their usual places for receiving such freights at the several ports on the coast of Texas, and on the inland waterways in this state, all freights and passengers coming to it from such steamships, steamboats, and other water craft and vessels, and destined to points on its line or to points beyond its line, or any other line of railway with which said line may connect or cross, and shall transport the same over its said line to destination, if on its line, or to the connecting or cross line in the direction of destination, if beyond its line, without delay or discrimination in favor of or against such steamship line, steamboat owner or company, or the owner of any other water craft or other vessels from whom such freight or passengers are received, and upon the same terms and conditions with those made by such railway company for like or similar service with any other person, steamboat company, steamship company or owners, or any other water craft or vessel, with which it does business at such points or stations as aforesaid.

II.

Interstate Commerce Act, as amended:

Section 1. . . . .

(4) It shall be the duty of every common carrier subject to this Act engaged in the transportation of passengers or property to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates, fares, and charges applicable thereto, and to provide reasonable facilities for operating through routes and to make reasonable rules and regulations with respect to the operation of through routes, and providing for reasonable compensation to those entitled thereto; and in case of joint rates, fares, or charges, to establish just, reasonable, and equitable divisions thereof as between the carriers subject to this Act participating therein which shall not unduly prefer or prejudice any of such participating carriers.

Section 7. That it shall be unlawful for any common carrier subject to the provisions of this Act to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage or interruption was made in good faith for some necessary purpose, and without any intent to avoid or un-

necessarily interrupt such continuous carriage or to evade any of the provisions of this Act."

III.

Central Transportation Company vs. Pullman's Palace Car Company, 139 U. S., 24:

"The charter of a corporation read in the light of any general laws which are applicable, is the measure of its powers. . . ." (p. 48)

"The plaintiff was not a strictly private, but a *quasi*-public corporation; and it must be so treated as regards the validity of any attempt on its part to absolve itself from the performance of its duties to the public, the performance of which by the corporation itself was the remuneration that it was required by law to make to the public in return for the grant of its franchise." (p. 51). . . .

"The necessary conclusion from these premises is that the contract was unlawful and void, because" . . . (*ultra vires*) . . . "and because it involved an abandonment by the plaintiff of its duty to the public." (p. 53)

H. M. GARWOOD,
J. H. TALLICHET,
Solicitors for Petitioner,
Texas and New Orleans
Railroad Company.